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April 27, 2021

VIA ECF

Honorable John G. Koeltl
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Re: *Grant et al. v. Trump et al.*, Case No. 1:20-cv-07103-JGK

Dear Judge Koeltl:

We represent Defendants Donald J. Trump and Donald J. Trump For President, Inc. (together, “Defendants”) in the above-referenced action. The Court previously granted Defendants’ request for the supplemental briefing on the pending motion to dismiss the complaint (Dkt. No. 18), in order to address the Second Circuit’s decision in *Andy Warhol Found. for the Visual Arts, Inc. v. Goldsmith*, No. 19-2420-CV, 2021 WL 1148826 (2d Cir. Mar. 26, 2021) (“*Andy Warhol II*”).

We write regarding the upcoming dates fixed in the scheduling order, dated April 2, 2021 (Dkt. No. 31):

- Defendants’ Supplemental Brief in support of the Motion to Dismiss the Complaint – May 3, 2021;
- Plaintiffs’ Response to Defendants’ Supplemental Brief – June 1, 2021; and
- Defendants’ Reply – June 15, 2021.

On April 23, 2021, the plaintiff in *Andy Warhol II* (“AWL”) filed in the Second Circuit a petition for panel rehearing and rehearing en banc. AWL’s petition is based, in part, on the recent Supreme Court decision, issued on April 5, 2021, regarding fair use under the Copyright Act. *See Google LLC v. Oracle Am., Inc.*, 141 S. Ct. 1183 (2021).

In light of the pending rehearing petition in *Andy Warhol II*, we respectfully request that the Court hold the deadlines for the supplemental briefing in abeyance until the Second Circuit takes action on the petition. Plaintiffs oppose Defendants’ request.

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We thank the Court for its attention to this matter.

Respectfully submitted,

/s/ Kenneth A. Caruso
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cc: All Counsel via ECF